



(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court;

. . .

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).<sup>1</sup>

A certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. See [28 U.S.C. § 2253\(c\)\(2\)](#). Such a showing requires a demonstration “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” [Slack v. McDaniel, 529 U.S. 473, 484 \(2000\)](#), (internal quotation marks omitted) (citing [Barefoot v. Estelle, 463 U.S. 894 \(1983\)](#), (defining pre-AEDPA standard for a certificate of probable cause to appeal)).

“Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” [Slack, 529 U.S. at 484](#). Similarly, if the district court denies a petition for writ of habeas corpus on procedural grounds without reaching the underlying constitutional claims on the merits:

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<sup>1</sup>Similarly, [Fed. R. App. P. 22\(b\)](#), as amended by AEDPA, indicates that in an action pursuant to [28 U.S.C. § 2254](#), a notice of appeal triggers the requirement that the district judge who rendered the judgment either issue a certificate of appealability or state the reasons why such a certificate should not issue. See generally [Tiedeman v. Benson, 122 F.3d 518, 521 \(8th Cir. 1997\)](#).

[A] COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and . . . would find it debatable whether the district court was correct in its procedural ruling . . . . Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further. In such a circumstance, no appeal would be warranted.

Id.

The court has carefully reviewed the record. Petitioner has failed to demonstrate that reasonable jurists would find this court's ruling debatable or wrong. For the reasons stated in its April 1, 2013, Memorandum and Order (Filing No. [9](#)), the court declines to issue a Certificate of Appealability.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Leave to Appeal IFP (Filing No. [17](#)) is granted;
2. Petitioner's Motion for Certificate of Appealability (Filing No. [15](#)), is denied without prejudice to reassertion before the Eighth Circuit; and
3. The Clerk of the court shall provide the Court of Appeals a copy of this Memorandum and Order.

DATED this 20<sup>th</sup> day of June, 2013.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge

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